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1 Dana Leonard Popick
2 Kimberly Cae Popick
3 20733 SW Booker Court
4 Beaverton, Oregon 97003
5 (503) 332-0861

6 Debtors Pro Se

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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON
11

12 In re:

13 DANA LEONARD POPICK, and
14 KIMBERLY CAE POPICK,
15 Debtors.

16 WARREN J. HEATER,

17 Plaintiff

18 v.

19 DANA LEONARD POPICK, and
20 KIMBERLY CAE POPICK,

21 Defendants.

Adversary Case # 18-03114

Bankruptcy Case No. 18-32608-tmb7

**DEFENDANTS' ANSWER, WITH
AFFIRMATIVE DEFENSES**

22 COMES NOW Debtors/Defendants, Dana Leonard Popick and Kimberly Cae Popick (hereinafter:
23 "Defendants"), and in response and response to the Complaint presented herein by Plaintiff, allege and aver as
24 follows:

- 25 1. Defendants admit the allegations of Paragraph 1 of Plaintiff's Complaint.
26 2. Defendants admit the allegations of Paragraph 2 of Plaintiff's Complaint.

1 3. Paragraph 3 of Plaintiff's Complaint contains multiple and dissevered allegations. Defendants
2 have no direct knowledge as to Plaintiff's current residency, and lack sufficient information upon which to base
3 an opinion. Defendants admit that Plaintiff has standing as a creditor herein, but deny that such standing is
4 based on the totality of allegations in Plaintiff's complaint.

5 4. Defendants admit the allegations of Paragraph 4 of Plaintiff's Complaint.

6 5. Defendants deny the allegations of Paragraph 5 of Plaintiff's Complaint.

7 6. Paragraph 6 of Plaintiff's Complaint contains multiple and dissevered allegations. Defendants
8 admit that they were the managing directors of Emerald Valley Development, LLC. Defendants deny the
9 remaining allegations of Paragraph 6.

10 7. Defendants admit the allegations of Paragraph 7 of Plaintiff's Complaint.

11 8. Defendants deny the allegations of Paragraph 8 of Plaintiff's Complaint.

12 9. Defendants deny the allegations of Paragraph 9 of Plaintiff's Complaint.

13 10. Paragraph 10 of Plaintiff's Complaint contains multiple, compound and conclusory allegations;
14 Defendants admit the allegations of Paragraph 10 of Plaintiff's Complaint, insofar as said allegations relate to the
15 design to divide and develop the property. To the extent Paragraph 10 of Plaintiff's Complaint makes further
16 factual allegations, they are denied.

17 11. Defendants admit the allegations of Paragraph 11 of Plaintiff's Complaint

18 12. Paragraph 12 of Plaintiff's Complaint contains multiple, compound and conclusory allegations;
19 Defendants admit the allegations of Paragraph 12 of Plaintiff's Complaint, insofar as said allegations relate to the
20 amount of the Note. To the extent Paragraph 12 of Plaintiff's Complaint makes further factual allegations, they
21 are denied.

22 13. Paragraph 13 of Plaintiff's Complaint contains multiple, compound and conclusory allegations;
23 Defendants admit the allegations of Paragraph 13 of Plaintiff's Complaint, insofar as said allegations relate to the
24 execution of the sales contract and the Note. To the extent Paragraph 13 of Plaintiff's Complaint makes further
25 factual allegations, they are denied.

26 14. Paragraph 14 of Plaintiff's Complaint contains multiple, compound and conclusory allegations;

1 Defendants admit the allegations of Paragraph 14 of Plaintiff's Complaint, insofar as said allegations relate to the
2 execution and delivery of the Note. To the extent Paragraph 14 of Plaintiff's Complaint makes further factual
3 allegations, they are denied.

4 15. Defendants admit the allegations of Paragraph 15 of Plaintiff's Complaint.

5 16. Defendants deny the allegations of Paragraph 16 of Plaintiff's Complaint.

6 17. Defendants admit the allegations of Paragraph 17 of Plaintiff's Complaint, insofar as said
7 allegations relate to the encumbrance of the property. To the extent Paragraph 17 of Plaintiff's Complaint
8 makes further factual allegations, they are denied.

9 18. Defendants deny the allegations of Paragraph 18 of Plaintiff's Complaint.

10 19. Defendants admit the allegations of Paragraph 19 of Plaintiff's Complaint, insofar as said
11 allegations relate to the date and substance of the communication. To the extent Paragraph 19 of Plaintiff's
12 Complaint makes further factual allegations, they are denied.

13 20. Paragraph 20 of Plaintiff's Complaint contains multiple, compound and conclusory allegations;
14 Defendants admit the allegations of Paragraph 20 of Plaintiff's Complaint, insofar as said allegations relate to the
15 commencement of the foreclosure proceedings. To the extent Paragraph 20 of Plaintiff's Complaint makes
16 further factual allegations, they are denied.

17 21. Defendants deny the allegations of Paragraph 21 of Plaintiff's Complaint.

18 22. Paragraph 22 of Plaintiff's Complaint requires no response from Defendant.

19 23. Defendants deny the allegations of Paragraph 23 of Plaintiff's Complaint.

20 24. Defendants deny the allegations of Paragraph 24 of Plaintiff's Complaint.

21 25. Paragraph 25 of Plaintiff's Complaint contains multiple, compound and conclusory allegations;
22 Defendants admit the allegations of Paragraph 25 of Plaintiff's Complaint, insofar as said allegations relate to the
23 encumbrances taken against the property. To the extent Paragraph 25 of Plaintiff's Complaint makes further
24 factual allegations, they are denied.

25 26. Defendants deny the allegations of Paragraph 26 of Plaintiff's Complaint.

26 27. Paragraph 27 of Plaintiff's Complaint contains multiple, compound and conclusory allegations;

1 Defendants deny the allegations of Paragraph 27 of Plaintiff's Complaint.

2 28. Defendants deny the allegations of Paragraph 28 of Plaintiff's Complaint.

3 29. Paragraph 29 of Plaintiff's Complaint contains multiple and dissevered allegations. Defendants
4 have no direct knowledge as to Plaintiff's state of mind, and lack sufficient information upon which to base an
5 opinion. Defendants therefore deny the allegations of Paragraph 29 of Plaintiff's Complaint.

6 30. Paragraph 30 of Plaintiff's Complaint contains multiple, compound and conclusory allegations;
7 Defendants deny the allegations of Paragraph 30 of Plaintiff's Complaint.

8 31. Defendants deny the allegations of Paragraph 31 of Plaintiff's Complaint.

9 32. Paragraph 32 of Plaintiff's Complaint requires no response from Defendant.

10 33. Defendants deny the allegations of Paragraph 33 of Plaintiff's Complaint.

11 34. Paragraph 34 of Plaintiff's Complaint contains multiple, compound and conclusory allegations;
12 Defendants deny the allegations of Paragraph 34 of Plaintiff's Complaint, insofar as said allegations relate to the
13 encumbrances taken against the property. To the extent Paragraph 34 of Plaintiff's Complaint makes further
14 factual allegations, they are denied.

15 35. Paragraph 35 of Plaintiff's Complaint requires no response from Defendant.

16 36. Defendants deny the allegations of Paragraph 36 of Plaintiff's Complaint.

17 37. Defendants deny the allegations of Paragraph 37 of Plaintiff's Complaint.

18 38. Paragraph 38 of Plaintiff's Complaint contains legal conclusions and theory; Defendants deny
19 the allegations of Paragraph 38 of Plaintiff's Complaint..

20 **AND FOR A FIRST AFFIRMATIVE DEFENSE:**

21 **Consent by Plaintiff**

22 39. Based upon the actions which form the basis for the claims set forth in the Complaint, and as
23 will be more completely demonstrated at trial, Plaintiff agreed to, and participated in, those actions which
24 Plaintiff now claims to have caused injury or damage. Since such participation and consent were given
25 knowingly and voluntarily, Plaintiff's claims are invalid.

26 40. As examples and contrary to the allegations set forth in Paragraphs 8 through 10 inclusive, it

1 was - in fact - Plaintiff who approached Defendant Dana Popick with the proposal of a joint venture to develop
2 Plaintiff's property, it was Plaintiff who proposed that Defendant Dana Popick should purchase the property
3 from him, it was Plaintiff who proposed that the property could be divided into six lots for development, and it
4 was Plaintiff who proposed the sale price of \$600,000.

5 41. Further, Plaintiff understood - as would any reasonable person in his position - that the transfer
6 of interest in the Property needed to be clear and unequivocal as a matter of course, in order that Defendant
7 Dana Popick could obtain the necessary bank financing to develop and subdivide the property.

8 **AND FOR A SECOND AFFIRMATIVE DEFENSE:**

9 **Unclean Hands**

10 42. The Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.
11 Plaintiff is attempting to benefit from his own wrongdoing; Plaintiff, through his past actions, has breached the
12 clean hands requirement, and its wrongful and illegal conduct preclude Plaintiff from seeking to invoke the
13 court's equitable jurisdiction.

14 **AND FOR A THIRD AFFIRMATIVE DEFENSE:**

15 **Fraud**

16 43. All or part of the actions or omissions alleged to have caused Plaintiff's claimed injuries,
17 resulted from fraud, deceit and/or misrepresentation by Plaintiff.

18 **AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

19 **Assumption of Risk**

20 44. Assuming, solely for the sake of argument, that there was a compensable injury which occurred
21 to Plaintiff, Plaintiff knew about the risk, and voluntarily undertook the risk that led to the damages complained
22 of in this case. Plaintiff therefore knowingly and voluntarily assumed any and all risks at issue in this case, and
23 such assumption of the risk bars in whole or in part the damages Plaintiff seeks to recover herein.

24 **AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

25 **Plaintiff's Comparative Fault**

26 45. Plaintiff was at fault in how he conducted his affairs relative to the incidents described in its

1 Complaint. Such fault caused or contributed to the damages complained of in this case. At all times material
2 herein, Plaintiff was negligent, careless and at fault, and conducted itself so as to contribute substantially to his
3 alleged injuries and damages. Such negligence, carelessness, and fault of Plaintiff bars in whole or in part the
4 damages which Plaintiff seeks to recover herein.

5 **AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

6 **Failure to State a Cause of Action**


7 46. The Complaint fails to state sufficient facts to sustain a cause of action against Defendants, and
8 is therefore deficient on its face.

9
10
11 WHEREFORE Defendants Dana Leonard Popick and Kimberly Cae Popick pray this Court for relief
12 as follows:

- 13 1. That Plaintiff take nothing on his claims against them; and
14 2. For Judgment and a Money Award in their favor and against Plaintiff for their reasonably-incurred
15 fees, costs, and disbursements herein, including reasonable attorney fees, if any; and
16 3. For such other relief as the court may deem appropriate.

17
18 DATED, this 10th day of December, 2018.

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20 
21 Dana Leonard Popick, Defendant Pro Se

22
23 
24 Kimberly Cae Popick, Defendant Pro Se
25 20733 SW Booker Court
26 Beaverton, Oregon 97003
(503) 332-0861


STATE OF OREGON)
County of Multnomah) ss.

Dana Leonard Popick
Dana Leonard Popick, Defendant/Pro Se

Kimberly C. Popick, Defendant Pro Se

I/we HEREBY CERTIFY that I/we served the attached: *DEFENDANTS' ANSWER, WITH AFFIRMATIVE DEFENSES*, on the respective parties and/or attorneys for parties whose names and addresses appear below, which, as to each such party or attorney, is the regular office address, or the address last given on a paper filed by him/her in the above entitled cause and served on me/us, on the date hereinabove indicated, by depositing in the Post Office at Beaverton, Oregon, or by facsimile transmission or by email transmission, at the facsimile number or email address normally utilized by said attorney or party in the regular conduct of business, or by any combination thereof, true copies of said documents, certified by me/us to be such, addressed to said party or attorney at said address.

SS. Dana Leonard Popick
Dana Leonard Popick, Defendant Pro Se


Kimberly Cae Popick, Defendant Pro Se
20733 SW Booker Court
Beaverton, Oregon 97003
(503) 332-0861

Attorney for Plaintiff